APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15760

WILLIAM C. CRONAN, *Appellant*

v.

FEDERAL COMMUNICATIONS COMMISSION, *Appellee*

Appeal from a Decision and Order of the Federal Communications Commission

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Decided December 8, 1960

Miss Shirley Fingerhood, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, and *Mr. Lawrence Speiser* for appellant.

Mrs. Ruth V. Reel, Counsel, Federal Communications Commission, with whom *Messrs. John L. FitzGerald*, General Counsel, Federal Communications Commission, and *Max D. Paglin*, Assistant General Counsel, Federal Communications Commission, were on the brief, for appellee.

Before MR. JUSTICE REED, retired,* and WILBUR K. MILLER, *Chief Judge*, and BURGER, *Circuit Judge*.

BURGER, *Circuit Judge:* Appellant filed an application with the Federal Communications Commission seeking renewal of his radiotelegraph and radiotelephone operator's licenses. The Commission by letter asked him to answer under oath questions with respect to his membership in the Communist Party or any group which advocates over-

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* Sitting by designation pursuant to Section 294 (a), Title 28, U.S. Code.

throw of a government of the United States by force or violence. Appellant refused to answer these questions, and, after a hearing limited to the issue of failure to answer, the Commission dismissed the application for failure to comply with its request.

That the Commission has statutory and constitutional authority to ask these questions is established by this court's recent decision in *Borrow* v. *Federal Communications Commission*, No. 15,473, June 30, 1960, *cert. denied*, 29 U.S.L. WEEK 3146 (U.S. Nov. 14, 1960).

Appellant claims that if the Commission desires this information, it must so announce by rule rather than proceed on an *ad hoc* basis. However, the regulations specifically provide that "if it appears that further information is required to determine the applicant's qualifications . . . the applicant will be notified in writing and given an opportunity to furnish such written showings as the Commission may request and as the applicant may desire to submit. . . ." and that, "failure to respond to official correspondence or request for additional information will be cause for dismissal." 47 C.F.R. 1.71 (a), (d). *Cf. Graham* v. *Richmond*, 106 U.S. App. D.C. 288, 272 F. 2d 517 (1959), where no such regulation existed. Moreover, the Commission is not required to state by rule all the elements of character fitness with respect to which it may desire to make inquiry. *Mester* v. *United States*, 70 F. Supp. 118 (E.D.N.Y.), *aff'd per curiam*, 332 U.S. 749 (1947).

Affirmed.

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SUPREME COURT, U.S.
JAMES R. BROWNING, CLERK

No. 792

In the Supreme Court of the United States

OCTOBER TERM, 1960

WILLIAM C. CRONAN, PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

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The decision of the court below involves precisely the same issue decided in *Borrow* v. *Federal Communications Commission*, 285 F. 2d 666 (C.A. D.C.), in which case this Court denied certiorari earlier this Term. 364 U.S. 892. Moreover, the facts are also the same. An applicant for renewal of radio operator licenses refused to answer questionnaires in which he was asked whether he was, or had been, a member of the Communist Party or other organiza-

tion which advocated overthrow of the government by force or violence. In both cases the Commission, after a hearing, denied renewal of the licenses because of the refusal to respond to the questionnaires. We set forth in our brief in opposition in the *Borrow* case the reasons why we believe the court below was correct in upholding the Commission against the attack that it was not authorized to ask the questions and that the questions infringed the petitioner's rights under the First Amendment. Brief in Opposition, No. 403, this Term. For the same reasons we believe that the decision below on this issue is correct.

The petitioner here attacks the opinion below also on the ground that he was denied due process under the Fifth Amendment. There is no substance to these objections. Certainly the Federal Communications Commission, in examining into the qualification of individuals for operators licenses, was authorized to proceed through inquiries specifically addressed to the individual applicant as well as through printed forms. 47 U.S.C. 403; 47 C.F.R. 1.71(a). Cf. *United States* v. *Morton Salt Company*, 338 U.S. 632, 641-643. This Court has held that the choice between proceeding by general rule or by *ad hoc* inquiry lies in the discretion of the administrative agency. *Securities and Exchange Commission* v. *Chenery Corporation*, 332 U.S. 194. Here the petitioner was given notice and a chance to be heard. He was not refused the license because of information as to his loyalty or because of accusations against him, but because he refused to answer questions within the

competence of the Commission to ask. *Kimm* v. *Rosenberg*, 363 U.S. 405.

For these reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

MAX D. PAGLIN,
General Counsel,

RUTH V. REEL,
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Federal Communications Commission.

APRIL, 1961.

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